HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 26, 2015
84th Legislature, Number 80
The House convenes at 10 a.m.
Part One

Five bills and three joint resolutions are on the Emergency Calendar, Major State Calendar, and Constitutional Amendments Calendar for second-reading consideration today. The bills and joint resolutions analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Today is the last day for the House to consider Senate bills and joint resolutions, other than local and consent, on second reading on a daily or supplemental calendar.

Alma Allen
Chairman
84(R) - 80

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 26, 2015
84th Legislature, Number 80
Part 1

SUBJECT: Omnibus ethics bill

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Cook, Giddings, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Minjarez, Oliveira

0 nays

3 absent — Craddick, Smithee, Sylvester Turner

SENATE VOTE: On final passage, April 28 — 31-0

WITNESSES: For — None

Against — Jack Gullahorn, Professional Advocacy Association of Texas

On — Erica Cole and Amy Long-Manuel, Clean elections; Joanne Richards, Common Ground for Texans; Carol Birch and Tom "Smitty" Smith, Public Citizen Texas; Craig McDonald, Texans for Public Justice; Sara Smith, Texas Public Interest Research Group; Todd Jagger; Paul Silver; (*Registered, but did not testify*: Grace Chimene, League of Women Voters of Texas)

BACKGROUND: Title 15 of the Election Code governs the regulation of political funds and campaigns, including requirements for financial reports by campaigns, candidates, officeholders, and political committees. These campaign financial reports must be filed with the Texas Ethics Commission.

Under Election Code, sec. 251.001 a political committee means a group of persons that has as a principal purpose accepting political contributions or making political expenditures.

Government Code, ch. 572 requires the following individuals to file a personal financial statement with the Ethics Commission:

- appointed officers and executive heads of state agencies;

- board members and executive heads of river authorities;
- officeholders and candidates for the Legislature, statewide offices, justices of a court of appeals, district judges, district or criminal district attorneys, and members of the State Board of Education;
- former or retired judges sitting by assignment; and
- state chairs of political parties receiving more than 2 percent of the votes for governor in the most recent general election.

DIGEST:

CSSB 19 would create new contribution reporting requirements for certain politically active persons or groups; expand and require the online posting of information included in personal financial statements; establish an ethics counselor to advise legislators on conflicts of interest; prohibit certain oral recordings of communications with legislators in the Capitol; and prohibit certain automated calls to legislative offices.

Disclosure of political contributions and expenses. The bill would create political contribution report requirements for a person or group of persons that:

- did not meet the definition of a political committee;
- accepted political contributions; and
- made one or more political expenditures, with certain exceptions, that exceeded $25,000 during a calendar year.

The bill would define "contribution" to include dues and gifts, except for commercial transactions involving the transfer of anything of value pursuant to a contract or agreement that reflected an industry's normal business practices. A "donor" would be defined as a contributor to a person or group subject to the disclosure requirements, regardless of whether the contributor was a member of the person or group that accepted the contribution.

The bill would define "contribution in connection with campaign activity" to mean a contribution that a donor knew or would have had reason to know could be used to make a political contribution or political expenditure or that could be comingled with other funds to make a political contribution or expenditure. A donor who signed a statement

indicating that a contribution could not be used to make a political contribution or expenditure would not have had reason to know that it could be used in such a manner.

Disclosure of contributions would be required only if the contribution was made in connection with a campaign activity and the aggregate amount exceeded $2,000 during the reporting period. A report would not be required to include:

- contributions not connected with campaign activity;
- the total amount of un-itemized political contributions or expenditures;
- the total amount of political contributions maintained by the person or group;
- expenditures that were not political expenditures; or
- the principal amount of outstanding loans.

The first report filed in a calendar year in which the $2,000 or $25,000 thresholds were exceeded would have to include all contributions in connection with campaign activity accepted from a person that in the aggregate exceeded $2,000 and all political expenditures made in the 12 months immediately preceding the acceptance of the contribution in connection with campaign activity or the making of the political expenditure that triggered the reporting requirements and had not been previously reported.

Personal financial statements. The bill would make changes to the personal financial statements that certain state officers are required to file. It would require that statements be submitted electronically through the Texas Ethics Commission website and made available in a searchable format to the public not later than the third business day after the date it was required to be filed or was actually filed, whichever is later. The commission would redact the home address of a filer before posting it on the website.

Financial statements would be required to include each source of a referral fee paid to a firm or other business entity in which the filer had a

substantial interest. Filers also would be required to identify each contract or subcontract with the state or a political subdivision to which the filer or the filer's spouse was a party and each paid relationship the filer or the filer's spouse had with the state or a political subdivision.

Filers also would have to identify any other source of earned or unearned income not reported elsewhere on the form, including federal or state governmental disability payments, other public benefits, or a pension, individual retirement account, or other retirement plan, and the category of the amount of income derived from each source. A "public benefit" would include the value of an exemption from taxation of the total appraised value of a residence homestead.

An individual filing a personal financial statement would be required to include an affirmation that the filer had filed a federal personal income tax return for the preceding year and had paid all income taxes owed, or that the filer had receive an extension. The filer also would include a statement that the filer had paid all property taxes due.

A state officer who received compensation for performing government contract consulting services would be required to report the name of each person to whom the officer provided the services and the category of the amount of compensation received.

Late and amended filings. The Ethics Commission could not grant a request for an extension of the deadline for filing a personal financial statement unless the commission determined that good cause existed. A statement could be amended without penalty after the eighth day only if the amendment was made before any complaint was filed with the commission and the commission determined that the original report was made without intent to mislead or misrepresent.

Pre-appointment statement of political contributions. Before being selected as an appointed officer by the governor, lieutenant governor, or House speaker, an individual would be required to have filed with the Ethics Commission a statement that disclosed any political contributions made by the nominee or the nominee's spouse during the two years preceding the nomination to:

- the appointing officer as a candidate or officeholder; or
- a specific-purpose political committee for supporting the appointing officer, opposing the appointing officer's opponent, or assisting the appointed officer as an officeholder.

Conflicts of interest. The bill would restrict a lobbyist from knowingly making a political contribution or expenditure from contributions accepted by the person as a candidate or officeholder for two years after the person left office. A violation would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

Detailed reporting. Beginning on September 1, 2015, the detailed reporting threshold for lobbyists' expenditures for transportation, lodging, food, beverages, entertainment, and gifts would be set by the Ethics Commission at an amount between $50 and 60 percent of legislative per diem. The threshold for reporting also would apply to the immediate family of a member of the legislative or executive branch. The bill would specify that "expenditure" did not include a payment benefiting a member of the legislative or executive branch if the member fully reimbursed the expenditure before the reporting date.

Governor's staff. The bill would limit communication between former members of the governor's senior staff and the governor or a member of the governor's current senior staff if the former staff member received a benefit and intended to influence action. The communication would be banned until the end of the governor's term — or, if a staff member ceased work during the final 12 months of the governor's term, until the end of that term and any succeeding term. The bill would define "member of the governor's senior staff" as a person who helped formulate legislative policy or supervised others who did so.

Lawyer referrals. A member of the Legislature or a statewide elected official who was a member of the State Bar of Texas would be allowed to make or receive a referral for legal services only if the referral complied with State Bar rules and was evidenced by a written contract between the parties who were subjected to the referral. A violation would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

Ethics counselor. The Texas Legislative Council would designate a licensed attorney as an ethics counselor. Not later than 30 days after the Legislature convened, the ethics counselor would be required to review legislators' financial statements and provide each member with an ethics analysis of the member's financial interests. The analysis would identify the subjects of legislation that had the potential to violate the statutory prohibition against voting on a bill that directly benefitted a specific transaction of a business entity in which the member had a controlling interest. A legislator who reasonably relied on an ethics analysis would not be subject to a criminal penalty or other sanction for violating the voting prohibition. An ethics analysis would be public information.

Capitol recordings. CSSB 19 would add a section to Government Code, ch. 306 regarding recorded oral communications made inside the Capitol. A person would have a justified expectation that oral communication with a legislator or the lieutenant governor while in the Capitol would not be subject to interception. "Intercept" would mean the aural acquisition of the contents of communication through the use of an electronic, mechanical, or other device that was made without the consent of all parties. It would not include the ordinary use of a telephone; hearing aid designed to correct subnormal hearing; radio, television, or other wireless receiver; or a cable system that relayed a public wireless broadcast from a common antenna to a receiver.

A party to a protected oral communication with a legislator or the lieutenant governor would have a civil cause of action against a person who:

- intercepted, attempted to intercept, or employed or obtained another to intercept or attempt to intercept the communication; or
- used or divulged information that the person knew or reasonably should have known had been obtained by interception of the communication.

A person who established a cause of action would be entitled to:

- an injunction prohibiting a further interception, attempted

interception, or divulgence of information;
- statutory damages of $10,000 for each occurrence;
- all actual damages in excess of $10,000;
- punitive damages in an amount determined by a court or jury; and
- reasonable attorney's fees and costs.

Journalist privilege. Under the bill, the qualified testimonial privilege in Civil Practice and Remedies Code, ch. 22 for journalists would not apply to a person who:

- was required to report direct campaign contributions;
- controlled a political committee;
- served as the campaign treasurer of a candidate or political committee; or
- made a corporate political expenditure to finance the establishment or administration of a general purpose committee.

In addition, a person could not claim the journalist privilege is the individual was required to be disclosed on an IRS Form 990 in one of the above-listed categories.

The journalist privilege also could not be claimed by a person who was an employee or contractor or who acted on behalf of anyone described above who could not claim the privilege.

Automated calls. The bill would amend Government Code, sec. 305.027 regarding disclosure of legislative advertising to include automated phone calls or "robocalls" that convey a prerecorded or synthesized voice message. A person would commit an offense if the person knowingly communicated or entered into a contract to communicate legislative advertising to a member of the Legislature using an automated dial announcing device. An offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

Felony conviction. A legislator convicted of a felony would be required to vacate his or her office on the date the conviction became final.

Ethics Commission. CSSB 19 would revise standards of judicial review to require review by substantial evidence for Ethics Commission final orders in appeals involving lobbyist registrations.

The bill would allow the commission to disclose confidential information to law enforcement and require the commission to maintain confidentiality of the information. A violation would be a class C misdemeanor (maximum fine of $500).

Under the bill, a complaint would be considered "frivolous" if groundless and brought in bad faith or for purposes of harassment. A complaint would be considered "groundless" if it did not allege a violation that was material, nonclerical, or nontechnical. The commission would be required to award to the respondent of a frivolous complaint:

- costs, reasonable attorney's fees, and other expenses; and
- sanctions sufficient to deter similar frivolous complaints.

Effective date. The bill contains provisions for transitions and effective dates for various sections.

Except as otherwise provided in the bill, CSSB 19 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 19 proposes a number of reforms that significantly would improve ethics laws and ensure a more responsible government for Texans.

The governor declared legislation related to ethics an emergency matter for the 84th Legislature. CSSB 19 would include provisions to meet the governor's call for strengthening ethics laws related to disclosure of state contracts with elected officials, prohibiting lawmakers from voting on legislation from which they could profit, and increasing disclosure of campaign finance information.

The bill would close a loophole in existing political contribution reporting requirements and ensure that all entities spending money to influence elected were treated the same. Allowing major contributors to give money

in secret could open the door to corruption.

Currently, certain nonprofit 501(c)(4) organizations that spend more than $25,000 in political expenditures every year but do not qualify as a political action committees, are not required to report their political expenditures. These organizations have become increasingly active in Texas elections and should be subject to the same reporting requirements as other political organizations. Persons who were in compliance with campaign finance laws should have no reason to stop contributing to 501(c)(4) organizations because they would be required to disclose their political donations.

The bill would reduce opportunities for elected officials to use their official positions for personal gain by requiring more disclosure of referral fees, contractual relationships with state and local governments, and other sources of income. It would place financial statements online in a searchable format, echoing a successful practice in other states, while redacting a filer's address.

The bill's prohibition on secret recording of conversations involving legislators would help address concerns that have arisen this session. A person has a justified expectation that his or her oral communication with a member of the Legislature or the lieutenant governor while in the Capitol is not subject to recording unless the communication is public testimony at a legislative hearing.

The ban on robocalls would free up legislators' phone lines for calls from individual constituents who want to discuss pending legislation. Unlike robocalls, many individual constituents want to leave their contact information so that staff can follow up on their concerns.

OPPONENTS SAY:

CSSB 19 would go beyond reforming ethics laws to infringing on protected constitutional rights related to free speech and political association.

In trying to increase transparency of the activities of 501(c)(4) organizations, the bill could have a detrimental effect on anonymous political speech while implicating the First Amendment rights of

corporations as associations of individuals. It could discourage political giving by requiring reporting of any donation greater than than $2,000. Donors who did not want to be scrutinized or harassed based on their political views and donations would have to be more circumspect with their political donations.

The bill would infringe on the First Amendment by prohibiting the recording of conversations with members of the Legislature in the Capitol and creating a civil cause of action against a person who made or divulged such a recording. This could further insulate legislators from their constituents. In addition, citizen journalists would lose protections that could prevent them from being compelled to provide testimony and disclose confidential sources.

The bill also would prohibit citizens from making auto-dial calls to members of the Legislature with pre-recorded messages expressing a view on pending legislation. Political candidates still would be able to use robocalls to reach voters, but those voters would be restricted from using the same technology to call their elected representatives.

The bill would require a "cooling off" period before former senior staff members of the governor's office could try to influence legislation but would not require the same of former legislators. It also should contain stronger provisions than the proposed ethics counselor to prevent legislators from voting to benefit their businesses.

Placing detailed personal financial information online could allow some who would misuse the information to target elected officials or their families.

NOTES:

CSSB 19 differs in several ways from the Senate engrossed version, including that the House committee substitute would:

- specify the criteria for people to whom qualified testimonial privilege for journalists would not apply;
- require certain politically active nonprofits to disclose campaign expenditures that exceeded $25,000 a year;
- ban automated calls to legislative offices; and

- require disclosure of all contracts with a public entity to which the filer or the filer's spouse is a party; and
- require affirmations that a state officer has paid federal income tax and property tax obligations.

Unlike the House committee substitute, the Senate engrossed version would have:

- banned registered lobbyists from running for elected office; and
- required drug testing for people filing for elected office.

SUBJECT: Continuing the Department of Family and Protective Services

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Raymond, Rose, Keough, Klick, Peña, Price, Spitzer

0 nays

2 absent — S. King, Naishtat

SENATE VOTE: On final passage, April 13 — 31-0

WITNESSES: (*On House companion bill, HB 2433*)
For — (*Registered, but did not testify*: Katherine Barillas, One Voice Texas; Ashley Harris, Texans Care for Children)

Against — Judy Powell, Parent Guidance Center

On — (*Registered, but did not testify*: Audrey Carmical and John Specia, Department of Family and Protective Services; Kyle Janek, Health and Human Services Commission; Amy Tripp, Sunset Advisory Commission)

BACKGROUND: **Department overview**. The Department of Family and Protective Services (DFPS) exists to protect children, adults 65 years of age or older, and individuals with disabilities. It was created in 2003 as part of a consolidation of health and human services agencies. The department's functions were drawn from the former Department of Protective and Regulatory Services.

A commissioner appointed by the executive commissioner of the Health and Human Services Commission oversees operations of DFPS. The HHSC executive commissioner and the DFPS commissioner develop rules and policies for the department with input from an advisory council appointed by the governor.

DFPS investigates allegations of abuse or neglect of children or vulnerable adults, places abused or neglected children in alternative living

arrangements while seeking to address their long-term needs, and provides other services to help prevent abuse and neglect in these populations. In addition, the agency regulates child-care centers and residential child-care facilities to ensure that minimum standards for health and safety are met.

In fiscal 2013, the agency received nearly 229,334 reports of alleged child abuse or neglect, according to the Sunset Advisory Commission. In the same year, the agency received 98,920 allegations of abuse, neglect, or exploitation of elderly or disabled individuals. Staff also conducted 37,128 day-care inspections and completed 18,429 investigations in fiscal 2013.

Budget and staffing. In fiscal 2013, the agency spent $1.37 billion, a little more than half of which was provided through federal funding streams. General revenue contributed 47 percent, or $645 million, toward the agency's spending. At the end of the fiscal 2013, the department employed 10,650 staff and was authorized to fill 11,175 FTEs.

Child Protective Services (CPS) is the largest division within the agency, employing 7,759 of the department's filled positions and spending about 85 percent of its funds. The Adult Protective Services and Child Care Licensing divisions employed 958 and 509 staff, respectively, at the end of 2013. DFPS also operates a Prevention and Early Intervention program by contracting with local providers to deliver services in communities. The 83rd Legislature added 1,175 positions to the department's staffing for fiscal 2014-15. Most of these were CPS caseworkers, but 41 positions were added to support investigations of illegal child care operations.

DIGEST:

CSSB 206 would continue the Department of Family and Protective Services (DFPS) until September 1, 2027.

The bill would make various changes to Family Code, ch. 263, which governs the review of placement of children under the care of DFPS, and ch. 264, which governs child welfare services. The bill also would make changes to other sections of the Family Code, including those governing adoption, investigations of child abuse or neglect reports, prevention and early intervention services, and educational services for children in foster care.

The bill would change procedural elements associated with the agency's assuming and managing conservatorship of children who were separated from their parents because of suspected or proven abuse or neglect. Some changes would be designed to protect children who were in the care of the state. For example, the bill would require shorter timelines for the completion of home studies and background checks in certain situations.

Notifications. CSSB 206 would make several changes to the notification procedures for parents and others involved with a child in managing conservatorship of DFPS, including requirements that the department:

- make a reasonable effort to notify a child's parent within 24 hours if there was a significant change in the medical condition of the child, if the child was enrolled or participating in a drug research program, or if the child received an initial prescription of psychotropic medication;
- notify a child's parent or parent's attorney, as well as other concerned parties, within 48 hours before a change to a child's residential child care facility; and
- notify a child's parent or parent's attorney as well as other concerned parties as soon as possible but not later than 10 days after the department became aware of a significant event affecting a child in the conservatorship of the department.

Information for prospective adoptive parents. The bill would provide for changes to the type of information shared with prospective adoptive parents and the manner in which the information would be shared. The bill would:

- allow the department to modify the form and contents of the health, social, educational, and genetic history report for a child based on factors specified by the department; and
- require the department to provide a child's case record upon request to prospective adoptive parents who had reviewed the history report and indicated a desire to proceed with the adoption.

Reporting requirements. CSSB 206 would specify certain reporting requirements for the department, including a report of statistics by county that related to key performance measures and data elements for child protection. This annual report would have to be made publicly available and would include information on the number of child abuse and neglect reports, the number of child deaths from abuse and neglect in the state, the number of children in managing state conservatorship at the time of their death, and the timeliness and the achievement of certain programmatic goals. The bill also would require the department to conduct an annual process to seek and evaluate public input on the usefulness of reporting requirements and any proposed changes.

Changes to Education Code. CSSB 206 would make various changes to the Education Code. For example, the bill would:

- provide for additional continuity related to a child's attendance at a school regardless of certain other changes in the child's conservatorship status;
- provide additional reasons for an excused absence from school for a child in conservatorship, including allowing an absence for an activity required under the child's service plan; and
- remove a prohibition on allowing tuition benefits for children who had exited DFPS conservatorship and were returned to their parents in certain situations.

New planning requirements. CSSB 206 would require DFPS to address its planning in three major areas.

Child Protective Services plan. The bill would require that DFPS develop and implement an annual business plan for the Child Protective Services program, which would include long-term and short-term performance goals, identification of priority projects, a statement of staff expectations identifying responsible persons or teams, tasks and deliverables expected, resources needed to accomplish each project, a time frame for the completion of each deliverable and project, and the expected outcome for each project. By October 1 each year, the annual business plan would be submitted to the governor, lieutenant governor, speaker of the House, and chairs of the standing committees of the House and Senate with primary

jurisdiction over child protection issues.

Prevention and early intervention services plan. The bill would require that DFPS develop and implement a five-year strategic plan for its prevention and early intervention services program and issue a new plan by September 1 of the last fiscal year in each five-year period. The plan would identify methods to leverage other sources of funding or provide support for existing community-based prevention efforts and would include a needs assessment that identified programs to best target the needs of the highest-risk populations and geographic areas. It also would have to identify the goals and priorities for the department's overall prevention efforts, identify methods to collaborate with other state agencies on prevention efforts, and identify specific strategies to implement the plan and to develop measures for reporting on the overall progress toward the plan's goals. DFPS would have to update the plan annually and post it on the department's website.

Foster care redesign plan. The bill would require that the agency develop and maintain a plan for implementing its foster care redesign initiative. The plan would have to include:

- a description of the department's expectations, goals, and approach to implementing foster care redesign;
- a timeline for implementing foster care redesign throughout the state, any limitations related to the implementation, and a contingency plan to provide continuity of foster care services delivery if a contract with a single source continuum contractor ended prematurely;
- delineation and definition of the case management roles and responsibilities of the department and the department's contractors and the duties, employees, and related funding that would be transferred to the contractor by the department;
- identification of and plans to address training needs;
- a plan for evaluating the costs and tasks associated with each contract procurement, including the initial and ongoing contract costs for the department and contractor;
- the department's contract monitoring approach and a plan for

evaluating the performance of each contractor and the foster care redesign system as a whole that would include an independent evaluation of processes and outcomes; and

- a report on transition issues resulting from implementation of the foster care redesign.

DFPS would update the implementation plan and post the updated plan on its website annually.

Changes to child care licensing. CSSB 206 would authorize more discretion in assessing administrative penalties for high-risk child care license violations. The bill also would direct the agency to develop, adopt, and publicize an enforcement policy that would delineate how the department determined appropriate disciplinary action for violations. The bill also would provide more flexibility to the agency in setting fees associated with child care licensing and would provide for the creation of a license and registration renewal process.

Sunset provision and effective date. Unless continued in existence as provided by the Texas Sunset Act, the department would be abolished on September 1, 2027. This provision would take effect only if HB 2304 by Price, SB 200 by Nelson, or similar legislation under consideration by the 84th Legislature did not become law. If HB 2304, SB 200, or similar legislation became law and provided for the continuation of the department, this provision would have no effect.

With the exception of certain executive commissioner rules related to licensing, certification, and registration renewals, the bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 206 reflects the best efforts of many people to make essential changes to the Department of Family and Protective Services (DFPS) that would improve the lives of children in foster care, better protect children cared for in licensed or other regulated child care facilities, and improve the strategic planning of the agency. The bill also would reduce administrative burdens on DFPS caseworkers, which would assist them in doing their jobs more effectively and allow them to spend more time with children and families, along with potentially reducing turnover. The bill

would represent a substantial step forward in improving outcomes for the state's most vulnerable populations.

In its recent reports, the Sunset Advisory Commission characterized DFPS as an agency frequently responding to crisis and criticism. Analysis by the Stephen Group indicated that caseworkers were able to spend only 26 percent of their time with children and families. The commission identified turnover of caseworkers, who are in a difficult and highly stressful work environment, as one of the biggest challenges the agency faces. Therefore, reducing unnecessary work for caseworkers became a core part of responding to the Sunset commission's findings. A key recommendation in the February 2015 Sunset report was to eliminate, clarify, and streamline burdensome and prescriptive statutory requirements. CSSB 206 is a reflection of the items that emerged from the process of determining which changes should be made through legislation and which should be made through other means.

Stakeholders have worked extensively on the bill to ensure that it reflects the relevant recommendations made by the Sunset Advisory Commission and that it would balance the needs of the agency, the rights of parents, and the safety and well-being of children. The findings of an operational review conducted by the Stephen Group, input from DFPS, and the recommendations of a workgroup appointed by Sen. Jane Nelson were considered along with the Sunset Advisory Commission's findings and recommendations in formulating the bill.

The notification requirements of the bill appropriately would allow communication to parents via an attorney. While it is the standard practice for DFPS to notify parents, sometimes they prefer to receive communication through an attorney. The fact that attorneys have an ethical obligation to notify their clients creates an assurance that parents would be notified appropriately. Requiring the department always to notify parents, regardless of the situation at hand, would be overly rigid and would place a burden back on the caseworkers who would have to provide the notification.

CSSB 206 would allow DFPS to retain some discretion about which information to release to prospective adoptive parents, including the

ability to modify the form they are required to use. The bill would require the agency to provide the child's case record if prospective adoptive parents requested it after receiving other information. This would be a sufficient and balanced approach.

The bill would require DFPS to report broad categories of data while not being overly prescriptive. This would be consistent with one intention of the bill — to eliminate specific measures in statute and give DFPS greater flexibility. The bill also would require DFPS to conduct a process each year to allow for stakeholder input on the measures DFPS should report. Stakeholders would have the opportunity to participate in the process required by the bill and advocate for any new measures they thought were important.

OPPONENTS SAY:

While CSSB 206 reflects effort and progress in improving the quality of services for children in foster care or who are otherwise affected by DFPS' work, other specific improvements would not be addressed.

The bill includes a provision that would give DFPS the option to notify a parent or attorney in certain situations, but a parent always should be notified. By not clearly stating that a parent would have to be notified in the case of a significant event, the bill would create circumstances in which notification did not happen. This would be unfair to the parent and not good for the child.

DFPS should not have discretion about which information to release to prospective adoptive parents or the ability to modify the form they are required to use. Prospective adoptive parents need full access to certain information that can be critical in their decision to go forward with an adoption.

New reporting requirements in the bill should include reporting on the number of pregnant and parenting youth in foster care and the number who have been missing and have been victims of trafficking while in foster care. These are significant problems that are well known to be prevalent among foster youth, and they need to be tracked.

NOTES:

The Legislative Budget Board estimates CSSB 206 would have a negative

net impact of $1.4 million to general revenue through fiscal 2016-17.

SB 200 by Nelson, which would consolidate health and human services agencies and provide for the continuation of DFPS, passed the House on May 25.

SUBJECT: Limiting growth rate of appropriations for certain categories of spending

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 14 ayes — Otto, Ashby, Bell, G. Bonnen, Burkett, Gonzales, Hughes, Koop, R. Miller, Phelan, Price, Raney, Sheffield, VanDeaver

6 nays — Sylvester Turner, Giddings, Howard, Márquez, Muñoz, Walle

7 absent — Capriglione, S. Davis, Dukes, Longoria, McClendon, Miles, J. Rodriguez

SENATE VOTE: On final passage, April 9 — 19-12 (Ellis, Eltife, Garcia, Hinojosa, Lucio, Menéndez, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: No public hearing

BACKGROUND: Texas Constitution, Art. 8, sec. 22 provides that state spending not constitutionally dedicated to particular purposes cannot increase from one biennium to the next beyond the estimated rate of growth of the state's economy unless the cap is waived by a majority vote of both houses of the Legislature. Examples of revenue streams subject to the spending cap include sales, motor vehicle sales, franchise, and cigarette and tobacco taxes. Government Code, ch. 316, subch. A, specifies how the Legislative Budget Board adopts the growth rate and defines the estimated rate of growth of the state's economy as the growth in personal income.

DIGEST: CSSB 9 would establish a new statutory limit on certain appropriations. The Legislative Budget Board (LBB) would be required to establish a rate of growth for six categories of state spending and then apply those rates to appropriations, other than federal funds, for the next fiscal biennium.

Limit on rate of growth of appropriations. The bill would specify that for a biennium, the rate of growth of appropriations from all sources of revenue, other than the federal government, could not exceed a rate that would be determined by a formula in the bill for six individual categories of spending. The LBB would be required to establish the spending limit

on:

- transportation;
- public primary and secondary education;
- higher education;
- health care;
- public safety and corrections; and
- other general government.

Calculation of the limit. The LBB would establish a limit on the rate of growth of appropriations from all non-federal sources of revenue, for each specific spending category for that biennium, as compared to the previous biennium by subtracting one from the product of:

- the sum of one and the estimated *rate of growth in the population served* by expenditures in that spending category for the biennium; and
- the sum of one and the estimated *rate of inflation in a representative set of goods and services* for which appropriations were made in that spending category during the biennium.

Application to appropriations. After developing the rates, the LBB would be required to apply them to proposed appropriations.

The LBB would establish for the next fiscal biennium a limit on the amount of appropriations from all non-federal sources of revenue by multiplying the amount of appropriations for each category for the current biennium by the sum of one and the limit on the rate of growth of appropriations for that category.

If the rate for any category was a negative number, the appropriations from all non-federal sources for that category available for the next biennium would be the same as the amount in the current biennium.

The LBB could not transmit the budget or the general appropriations bill to the governor and Legislature as required in current law until it adopted the limit on the rate of growth.

If the LBB did not adopt the required limits, the non-federal appropriations for each spending category that would be available for the next biennium would be the same as the amount for the current biennium.

If the Legislature exempted an appropriation for the next biennium from the requirements in the bill, the LBB would exclude the current or previous appropriations that are similar to the exempted one.

Budget recommendations. The LBB would be required to include in its budget recommendations the proposed limit of appropriations from non-federal revenue for each spending category. These recommendations could not exceed the limit adopted by the LBB. This prohibition could be overridden by a majority vote of the LBB members from each house.

Publication, hearing. Before the LBB approved the items of information required by the bill, it would have to publish the information and a description of its methodology and sources for the calculations in the Texas Register. By December 1 of even-numbered years the LBB would have to hold a public hearing on the proposed items of information and the methodology.

Enforcement. The proposed limit on appropriations for each spending category that would be established under the bill would be binding on the Legislature with respect to appropriations for the next biennium unless the Legislature adopted a resolution raising the proposed limit. The resolution would have to be approved by a record vote of the majority of each house.

The resolution would have to find that an emergency existed, identify the nature of the emergency, and specify the amount of appropriations authorized. The amount approved could not exceed the amount specified in the resolution.

The bill would take effect September 1, 2015, and would apply only to appropriations beginning in fiscal 2018.

SUPPORTERS SAY:

CSSB 9 would establish additional statutory spending limits to help ensure fiscally responsible spending by the Legislature. While overall

state spending currently is limited by a provision in the Constitution, that limit is only one measure that should be used to craft the state's budget. The bill would not replace the current limit, only supplement it with a more detailed way of limiting state spending. Both measures would work together to make state budgeting transparent.

Under the current constitutional cap, state spending not constitutionally dedicated to particular purposes cannot increase from one biennium to the next beyond the growth rate in statewide personal income adopted by the LBB unless the cap is waived by a majority vote of both houses of the Legislature. However, features in the current spending cap can result in a restriction that does not indicate what limits should be used for individual budget categories, and that might not set an appropriate limit. Further spending limits based on a larger portion of state revenue and on individual categories of spending that also considered additional factors should be applied to the budget process as well.

The current cap limits only appropriations of state tax revenue that is not dedicated by the Constitution, leaving a significant portion of the budget not subject to this kind of limit. The bill would address this by establishing an additional spending cap based on a larger portion of state revenue. By applying the new caps to all non-federal spending, the bill would bring all funds that are subject to state oversight under a limit and give a more transparent picture of state appropriations.

The bill also would break spending into six categories and apply limits to those individual categories to best reflect the needs of the state. In some categories, such as those serving children and the elderly, the need to fund state services may grow faster than in other categories. For some categories of spending, such as health care and transportation, inflation could be higher than in others.

Although the current overall cap is based on income growth, it would be helpful for lawmakers to have supplemental caps based on other measures. The bill would provide this type of information by basing the caps in individual categories on population growth and inflation for goods and services in that specific category.

The bill should be enacted now so that this fiscal discipline could be applied in the fiscal 2018-19 budget cycle. The bill would give the Legislature the necessary flexibility to exceed the cap with a majority vote, if an issue arose with the new requirement or to meet unanticipated or extraordinary needs. Future legislatures could make the decision about whether to continue using the new caps. The threshold of a majority vote to exceed the limits in the bill would be the same threshold applied to exceeding the current constitutional cap.

The current spending cap works well to set parameters on spending and should be supplemented by the limits in the bill, but not replaced. For example, replacing the current cap with an overall cap tied broadly to population plus inflation could rely too heavily on the consumer price index. The consumer price index uses a basket of goods and services purchased by consumers, such as groceries and apparel, which does not necessarily reflect the purchases or needs of the state.

While the Legislature could impose such limits without a statutory cap, CSSB 9 would ensure spending was responsible and would be consistent with the state's policy of using spending caps.

OPPONENTS SAY:

The Legislature should not institute additional restrictions on spending without full information about their effect on the state budget. Examples of the limits that the spending caps proposed in CSSB 9 would have set on previous budgets or the proposed fiscal 2016-17 budget should be developed so that lawmakers could understand the interaction of the restrictions on spending before applying the cap.

Establishing additional spending limits would reduce flexibility in budgeting and could make the state less able to respond to changing conditions, to meet a need for a service, or to make large investments in one area of the budget. While there might be benefit in the state taking population and inflation into account when budgeting, these factors should not be factored into another rigid spending limit. The Legislature could impose such limits without a statutory restriction.

If the Legislature wanted to apply a new restriction on state spending, it should be done through a constitutional amendment, just as the current

cap was established in 1978.

OTHER OPPONENTS SAY:

Instead of adding additional limits to state spending, the current limit based on growth in personal income should be replaced by a measure centering on population and inflation. Such a limit would be a more accurate measure of the fiscal position of the state and would work better to limit spending to an appropriate level.

To ensure fiscal discipline, the threshold to exceed any spending limits should be higher than a simple majority vote in each legislative chamber.

The Legislature should apply spending limits to all spending, including federal funds. This would ensure full budget transparency.

SUBJECT: Carrying of handguns on campuses of institutions of higher education

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 6 ayes — Phillips, Burns, Dale, Metcalf, M. White, Wray

3 nays — Nevárez, Johnson, Moody

SENATE VOTE: On final passage, March 19 — 20-11 (Ellis, Garcia, Hinojosa, Lucio, Menéndez, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: (*On House companion bill, HB 937*)
For — Jeremy Blosser, Tarrant County Republican Party; Cole Bordner, Students for Concealed Carry on Campus; Richard Briscoe, CJ Grisham and Christopher Martin, Open Carry Texas; Amy Clark, Republican Party of Texas; Tov Henderson, Terry Holcomb, Texas Carry; Rachel Malone, Texas Firearms Freedom; Tara Mica, National Rifle Association; Richard Morgan, Texas Young Republican Federation; Alice Tripp, Texas State Rifle Association; and 21 individuals; (*Registered, but did not testify*: Cara Bonin, Katy Libertea, Katy Tea Party, Katy NORML; Bill Elkin, Houston Police Retired Officers Association; Paul Frueh and Charles (Chuck) Ballweg, NTCL; MerryLynn Gerstenschlager, Texas Eagle Forum; Gina Holcomb, Texas Carry; AJ Louderback, Sheriffs' Association of Texas; Aaron Mitchell, Texas A&M Student Senate; Thatcher Townson, Students Active in the Leadership of Tomorrow; Matthew Walbeck, State Republican Executive Committee; and 12 individuals)

Against — David Albert, ACC, American Federation of Teachers; Ted Melina Raab, American Federation of Teachers; Grace Chimene, League of Women Voters of Texas; Julie Gavran and Kristen Katz, Campaign to Keep Guns Off Campus; Troy Gay, Austin Police Department; Nicole Golden, Stephanie Lundy, Richard Martinez, Angela Turner, Nobie White, Moms Demand Action for Gun Sense in America; Chuck Hempstead, Texas Association of College Teachers; Frances Schenkkan, Texas Gun Sense; and 10 individuals; (*Registered, but did not testify*: Andrea Brauer, Anne Musial, Jonathan Panzer, Kimberly Taylor, Texas

Gun Sense; Alexandra Chasse, Jamie Ford, Anna Kehde, Margie Medrano, Rosalie Oliveri, Susan Pintchovski, Donna Schmidt, Kelly Tagle, Bonnie Tompsett, Moms Demand Action for Gun Sense in America; Beaman Floyd, Texas Community College Teachers Association; Steven Johnson, Texas Association of Community Colleges; Merily Keller, Mental Health America of Texas, Texas Suicide Prevention Council; Neftali Partida, Houston Community College Board of Trustees; and 11 individuals)

On — William Adcox, The University of Texas Police at Houston; Justin Delosh, Lone Star Gun Rights; Pablo Frias, "We The People"; and five individuals; (*Registered, but did not testify*: Sherrie Zgabay, Texas Department of Public Safety)

BACKGROUND: Penal Code, sec. 46.03, makes it a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) for a person to intentionally, knowingly, or recklessly possess or go with a firearm, illegal knife, club, or other prohibited weapon onto:

- the premises of a school or educational institution;
- any grounds or building on which an activity sponsored by a school or educational institution is being conducted; or
- a vehicle of a school or educational institution, whether the school or institution is public or private.

Sec. 46.03 provides certain defenses to prosecution and also allows weapons to be carried in the places listed above pursuant to written regulations or written authorization of the institution.

Penal Code, sec. 30.06 creates an offense for a concealed handgun license holder who carries a handgun on someone's property after receiving verbal or written notice that entry on the property by a concealed handgun license holder is forbidden, or remaining on and failing to depart such a property with a concealed handgun after receiving notice.

Government Code, ch. 411, subch. H establishes the eligibility requirements for concealed handgun licenses. The requirements include:

- being a legal resident of Texas or otherwise eligible for a nonresident license;
- being at least 21 years old unless the person is an honorably discharged member of the military who meets all other requirements;
- generally not having been convicted of or charged with criminal activity;
- being capable of exercising sound judgment for handgun use and storage and passing a mental health check;
- submitting fingerprints, paying a license fee, and passing a criminal history background check; and
- showing evidence of handgun use proficiency.

DIGEST:

SB 11 would allow concealed handgun license holders to carry concealed handguns onto the campuses of public higher education institutions or private or independent higher education institutions, including in passenger vehicles or any grounds or building on which an institution-sponsored activity was being conducted, unless the private or independent institutions opted out.

The bill would prohibit institutions of higher education from adopting any rules prohibiting license holders from carrying handguns on the institution's campus, with a few exceptions. These institutions could establish rules concerning storage of handguns in dormitories or other residential facilities that were owned or leased and operated by the institution and located on the institution campus.

Private institutions opt-out. The bill would allow a private or independent institution to choose not to allow handguns on campus. After consulting with students, staff, and faculty of the institution, these institutions could adopt rules prohibiting license holders from carrying concealed handguns on the institution campus, any grounds or building on which an activity sponsored by the institution was being conducted, or a passenger transportation vehicle owned by the institution.

Hospitals and pre-K-12 schools on campus. The bill would prohibit anyone from carrying a concealed handgun on the premises of a hospital,

preschool, elementary, or secondary school maintained by an institution of higher education if the institution posted appropriate notice in compliance with Penal Code, sec. 30.06.

Immunity. The bill would prevent a court from holding any of the following liable for damages caused by an applicant or a concealed handgun license holder or by an action or failure to perform a duty imposed by applicable concealed handgun license statutes:

- an institution of higher education;
- a private or independent institution of higher education that had not opted out of allowing handguns on campus; or
- an officer or employee of either.

A cause of action also could not be brought against any of the above institutions or individuals due to any damages caused by the actions of an applicant or license holder. These protections would not apply if the act or failure to act was capricious or arbitrary or if the conduct of any of these covered officers or employees with regard to their possession of the handgun on campus was the basis of a claim for personal injury or property damage.

This immunity would apply only to a cause of action that accrued on or after the effective date of this bill.

Penalty for open carry. The bill would create a class A misdemeanor offense (up to one year in jail and/or a maximum fine of $4,000) for a license holder who intentionally or knowingly openly carried a handgun, regardless of whether the handgun was holstered:

- on the premises of an institution of higher education; or
- on any public or private driveway, street, sidewalk or parking area of an institution of higher education.

The bill would create a defense to prosecution for a person who openly carried the handgun under circumstances in which the actor would have been justified in the use of force or deadly force. This penalty would not

apply to the performance of a historical reenactment in compliance with statute.

The bill also would create an exemption for a license holder who committed an offense by carrying an open or concealed handgun at a high school, college, or professional sporting event if the individual carried a handgun on the premises of a collegiate sporting event and the individual was not given proper notice under Penal Code, sec. 30.06.

Penalty for unlawful campus carry. The bill would create a class A misdemeanor offense (up to one year in jail and/or a maximum fine of $4,000) if an individual carried a handgun on the campus of a private or independent institution of higher education that had prohibited license holders from carrying handguns, as long as the institution provided notice under Penal Code, sec. 30.06. This would include carrying on the grounds or building on which an activity sponsored by the institution was being conducted or in a passenger transportation vehicle of the institution.

It would be a defense to prosecution under this section if the handgun was carried under circumstances in which the actor would have been justified in the use of force or deadly force. This penalty would not apply to the performance of a historical reenactment in compliance with statute.

This bill would take effect September 1, 2015, and would apply only to an offense committed on or after this date.

SUPPORTERS SAY:

SB 11 would protect the right of a concealed handgun license holder to carry a handgun on the public property of an institution of higher education funded with taxpayer dollars. Individuals on college campuses should have the right to self-defense against a shooter who comes onto campus or anyone who wishes to commit a crime against them. This bill would protect students, faculty, staff, or any campus visitor.

The bill would give universities flexibility to create their own rules for concealed handgun license holders on their campuses. Institutions could regulate the storage of handguns on campus, in dorms, and in university housing, to include completely prohibiting the storage of handguns in any campus residence if universities so chose. Many younger undergraduate

students would not be allowed to carry or store guns in their dorms in any case, because an individual must be 21 years or older in order to obtain a concealed handgun license. Further, the bill would treat private colleges and universities the same as private businesses in allowing those institutions to opt out of allowing handguns on campus.

Prohibiting guns on college and university campuses creates weapon-free zones that are targets for criminals and campus shooters. Those wishing to commit a crime know that they could enter a campus without facing the prospect of civilians who could effectively fight back. This creates a dangerous environment in which students, faculty, and visitors might not be able to protect themselves.

Law enforcement officers responding to a shooting would not have any more issues differentiating between a criminal and licensed handgun holders defending themselves than they would face off-campus, where concealed carrying of handguns is allowed. Concealed handgun license holders learn in licensing courses that they cannot draw their weapons until and unless they encounter an imminent threat, and are trained to move away from danger.

Allowing licensed individuals to carry handguns on college and university campuses would not pose a danger to the community. The background check and licensing process to obtain a handgun license is extremely thorough and prevents people who have committed serious crimes from acquiring licenses. Moreover, concealed handgun license holders are much less likely than civilians who do not hold the license to commit a crime. If a handgun license holder who was carrying a concealed weapon on a campus did commit a crime, existing laws would be enforced against that individual.

This bill would not affect places where license holders are not otherwise allowed to carry handguns, such as hospitals and pre-K-12 schools, even if those prohibited places were on a college campus where carrying of a handgun would generally be allowed under the bill.

OPPONENTS SAY:

SB 11 could contribute to a more dangerous environment and a culture of fear at Texas' colleges and universities by allowing the concealed carry of

handguns on campus.

The bill would mandate policy for all universities, but each university is unique and the decision whether or not to allow the carrying of handguns on a campus should be left to each campus. Boards of regents, chancellors, and presidents of Texas universities should be trusted to make decisions on handgun policy and the costs of campus carry for their own institutions. The bill should include an opt-in policy for institutions to grant local control.

An increase of lethal weapons on campus would detract from an environment intended to foster learning and academic debate. More guns on campus could reinforce a siege mentality and a generalized feeling that people are under assault. College students and professors should have the freedom to discuss ideas without the potential intimidation factor of handguns in the classroom.

Officers responding to a shooting could have difficulty differentiating between shooters if one or more people with concealed handgun licenses were trying to stop an aggressor. Even with the required training and education that comes with a license, shooting calmly and with precision is extremely difficult. This lack of ability and experience can contribute to casualties from crossfire.

The bill could increase the risk of handguns not being secured properly in a campus residence or on a person, which could lead to weapons falling into the wrong hands. With an environment of young students who may be drinking on or off campus, securing weapons is especially important, but also very challenging. Colleges and university mental health officials also worry about the correlation between guns and suicide. Suicide is a leading cause of death of university students, and increasing access to an effective means of impulsively taking one’s own life could increase its incidence.

The bill could make Texas universities less competitive for recruiting and retaining top faculty. Published reports of campus surveys suggest that a large majority of faculty oppose the presence of concealed handguns. Faculty members might be more inclined to accept an offer of

employment in a state where campuses did not permit the concealed carry of handguns rather than at a Texas higher education institution. The bill also would increase costs for universities incurred for gun lockers, training for staff and campus security, and additional administrative personnel, which would require either increases in state appropriations or tuition collected or a reduction or discontinuation of other student services or activities.

OTHER OPPONENTS SAY:

SB 11 inappropriately would protect private property rights over constitutional rights. Private universities should not be allowed to opt out of the bill just because they are private property. All concealed handgun license holders should be able to carry their handguns lawfully on any university campus. The right to self-defense for students of private universities should not be infringed by university regulations.

SUBJECT: Prohibiting abortion coverage under certain health insurance plans

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Cook, Craddick, Farney, Geren, Harless, Huberty, Kuempel

1 nay — Oliveira

5 absent — Giddings, Farrar, Minjarez, Smithee, Sylvester Turner

SENATE VOTE: On final passage, May 6 — 21-10 (Ellis, Garcia, Hinojosa, Menéndez, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: No public hearing

BACKGROUND: A qualified health plan under the federal Affordable Care Act (ACA) is a health insurance plan that provides federally required essential health benefits, that follows federally established limits on cost-sharing (such as deductibles, copayments, and out-of-pocket maximum amounts), and that was certified by a health benefit exchange. Qualified health plans are offered in Texas by many insurance companies, such as Aetna, Blue Cross and Blue Shield, Cigna, Humana, and United. Qualified health plans are made available to consumers in Texas through a federal health benefit exchange, also known as a health insurance marketplace.

42 U.S. Code sec. 18023 under federal law provides that a state may elect to prohibit abortion coverage in qualified health plans offered through an exchange in the state if the state enacts a law to provide for such a prohibition.

Health and Safety Code, ch. 171 governs abortion, which it defines to mean the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus. Sec. 171.002 defines the term "medical emergency" to mean a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by

a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

DIGEST:

CSSB 575 would prohibit certain health care plans from providing coverage for abortion other than in a medical emergency. The bill would not authorize coverage for an abortion based on a potential future medical condition that could result from a voluntary act of the enrollee. A person would not be prevented from purchasing optional or supplemental coverage for abortions under a health benefit plan other than a qualified health plan offered through a health benefit exchange.

The bill would define "abortion" and "medical emergency" as specified in Health and Safety Code, sec. 171.002.

Affected plans. A qualified health plan offered through an Affordable Care Act (ACA) health benefit exchange would be prohibited from providing coverage for an abortion other than in a medical emergency.

The bill also would restrict abortion coverage for certain state employee health plans, including:

- group health coverage made available by a school district;
- a basic coverage plan under the Texas Employees Group Benefits Act;
- a basic coverage plan under the Texas Public School Employees Group Benefits Program;
- a primary care coverage plan under the Texas School Employees Uniform Group Health Coverage Act; and
- basic coverage under the Uniform Insurance Benefits Act for employees of the University of Texas and Texas A&M systems.

State employee plans specified in the bill could provide coverage for abortion only if:

- the coverage was provided to an enrollee separate from other health benefit plan coverage offered by the issuer;

- an enrollee paid a separate premium for abortion coverage in addition to the premium for other health benefit plan coverage;
- an enrollee provided a signature for coverage for abortion, separately and distinct from the signature required for other health benefit plan coverage offered by the issuer; or
- the coverage provided benefits for abortion due to a medical emergency.

Calculating premiums. For state employee health plans, the bill would specify that a health benefit plan issuer that provided coverage for abortion would calculate an enrollee's premium so that the premium would fully cover the estimated cost of abortion per enrollee, determined on an average actuarial basis.

When calculating the premium, an issuer could not take into account any cost savings in other health benefit plan coverage that was estimated to result from coverage for abortion, including costs associated with prenatal care, delivery, or postnatal care.

A health benefit plan issuer that provided coverage other than coverage for abortion could not discount an enrollee's premium or reduce an enrollee's premium on the basis that the enrollee had health benefit plan coverage for abortion.

Notice. The bill also would require a health benefit plan issuer that provided certain state employees coverage for abortion, at the time of enrollment for the plan, to provide each enrollee with notice that:

- coverage for abortion was optional and separate from other health benefit plan coverage offered by the health benefit plan issuer;
- the premium cost for coverage for abortion was a premium paid separately from and in addition to the premium for other health benefit plan coverage offered by the issuer;
- the enrollee could enroll in a health benefit plan that provided coverage other than abortion coverage without obtaining coverage for abortion.

Supplemental coverage. For an employer or entity that offered a health benefit plan with abortion coverage for certain state employees, the bill would require the employer or entity to provide each employee or group member with an opportunity to accept or reject supplemental coverage for abortion at the following times:

- at the beginning of employment or when the group member's coverage began, as applicable; and
- at least one time per calendar year after the first year of employment or group coverage.

The changes would apply only to a health benefit plan specified by the bill that was delivered, issued for delivery, or renewed on or after January 1, 2016.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 575 would allow Texans to choose not to pay for health insurance coverage for abortions or to choose to pay for abortion coverage. Federal law allows states to opt out of paying for abortions under the federal health insurance exchange, which more than 20 states already have done.

Many Texans do not want to pay for abortion coverage as part of their basic health insurance plan for moral or other reasons. The bill would help ensure that Texans were not paying for health insurance coverage that they did not want or need.

The bill would allow for qualified health plans under the Affordable Care Act (ACA) to cover elective abortions only in the case of a medical emergency, as currently defined in the Health and Safety Code. This provision would help ensure that women had coverage to terminate a pregnancy that was life-threatening and in certain other situations.

The bill would not ban elective abortions. Texans could choose to carry a supplemental insurance plan for abortion coverage, if needed, or they could choose a private insurance plan that provided that coverage. The premium cost of a supplemental insurance plan would be minimal, as such plans usually provide a benefit of up to $500.

The bill would use the definition of a "medical emergency" that already exists in statute. It would not create a new definition, but would consistently apply the existing definition across all ACA health insurance plans.

OPPONENTS SAY:

CSSB 575 would create situations where a woman did not have insurance coverage if she and her doctor determined it was necessary to terminate a wanted, planned pregnancy. These situations could occur due to a woman's diagnosis with cancer or the development of a serious fetal abnormality that would not clearly meet the definition of a "medical emergency" under state law.

The bill would not include an exception for insurance to cover abortion in the case of rape or incest. In these situations, a woman may not have planned to have an abortion and may not have thought she would need supplemental abortion insurance, which is one reason why abortion coverage should not be excluded from basic health insurance plans.

The bill would single out abortion for exclusion from coverage under ACA health insurance plans, when nationally, most private insurance plans cover abortion care. This would be discriminatory and harmful to women's health. The bill also would single out middle-class working women who make up a large proportion of those who purchase health insurance through the federal health insurance exchange. It would allow only those who could afford private health insurance to have the option of abortion coverage as part of their basic health insurance plan.

NOTES:

The committee substitute differs from the engrossed Senate version of the bill in that the Senate engrossed version would specify additional types of health benefit plans to which the bill would apply.

SUBJECT: Notice to attorney general of constitutional challenges to state statutes

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Schofield, Sheets, S. Thompson

0 nays

1 absent — Raymond

SENATE VOTE: On final passage, May 12 — 30-0

WITNESSES: For — (*Registered, but did not testify*: Debby Valdez, Guardianship Reform Advocates for the Disabled and Elderly)

Against — (*Registered, but did not testify*: William Squires, Bexar County District Attorney's Office)

On — David Slayton, Office of Court Administration, Texas Judicial Council; Benjamin Dower, Office of the Attorney General; Robert Kepple, Texas District and County Attorneys Association

BACKGROUND: Government Code, sec. 402.010 requires courts to provide notice to the attorney general when a petition, motion, or other pleading challenging the constitutionality of a statute of this state is filed. The court must wait 45 days after this notice is provided before entering a final judgment holding a state statute unconstitutional.

In *Ex Parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013), the Texas Court of Criminal Appeals held that these provisions violated the separation of powers provision in Tex. Const., Art. 2.

DIGEST: SJR 8 would propose an amendment to the Texas Constitution that would authorize the Legislature to require courts to give notice to the attorney general of constitutional challenges to state statutes and to prescribe a period after that notice during which the court could not enter a judgment

holding a statute unconstitutional.

The resolution also would establish a temporary provision that Government Code, sec. 402.010 would be validated and effective on approval of the constitutional amendment and would apply only to a petition, motion, or other pleading filed on or after January 1, 2016. This provision would expire January 2, 2016.

The proposal would be presented to the voters at an election on November 3, 2015. The ballot would read: "The constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional."

SUPPORTERS SAY:

SJR 8 is necessary to ensure that the state's chief attorney has opportunity to defend the laws of this state from constitutional challenges. The proposed amendment would not restrict the ability of courts to strike down laws enacted by the Legislature on constitutional grounds. It simply would provide the state with ample opportunity to defend those laws.

The proposed amendment would not change the authority of the attorney general's office over criminal matters. It simply would provide the attorney general with notice so that the attorney general could offer assistance or file amicus briefs to defend the state law from constitutional challenge.

An amendment could resolve any issues related to the role of the attorney general's office in constitutional challenges in criminal cases. It would clarify that notice given to the attorney general in criminal cases under the proposed constitutional amendment was for the purpose of an offer of assistance or amicus support by the attorney general.

OPPONENTS SAY:

The constitutional amendment proposed by SJR 8 could create confusion regarding the attorney general's role in criminal cases. Under current law, the attorney general, with a few statutory exceptions that require the consent of local prosecutors, is not authorized to represent the state in criminal cases. Because of this lack of authority, it would be unnecessary

to provide notice to the attorney general in those cases. If prosecutors feel that they need the attorney general's assistance in a pending case, they easily can request assistance.

NOTES:

The author plans to offer a floor amendment that would specify that notice given to the attorney general in criminal cases under the proposed constitutional amendment would be for the purpose of an offer of assistance or amicus support by the attorney general.

SUBJECT: Allowing the exemption of certain charter schools from the property tax

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — D. Bonnen, Bohac, Button, Darby, Murphy, Parker, Springer

0 nays

4 absent — Y. Davis, Martinez Fischer, C. Turner, Wray

SENATE VOTE: On final passage, April 29 — 30-1 (Rodriguez)

WITNESSES: (*On House companion, HJR 85*)
For — Amanda List, Responsive Education Solutions; (*Registered, but did not testify*: Peggy Venable, Americans for Prosperity-Texas)

Against — (*Registered, but did not testify*: Deece Eckstein, Travis County Commissioners Court)

BACKGROUND: Art. 8, sec. 2(a) of the Texas Constitution allows the Legislature to exempt certain property from taxation, such as real property owned by churches, non-profit cemeteries, or public property used for public purposes.

DIGEST: SJR 30 would propose an amendment to the Texas Constitution to allow the Legislature to exempt from property taxes real property that is leased to a recognized charter school.

The ballot proposal would be presented to voters at an election on November 3, 2015. The ballot proposal would read: "The constitutional amendment authorizing the legislature to exempt from ad valorem taxation real property leased to certain schools organized and operated primarily for the purpose of engaging in educational functions."

SUPPORTERS SAY: SJR 30, if passed in conjunction with SB 545, would help to level the playing field for charter schools. Current law exempts school property from taxation if the property is owned by the school itself. Exempting

certain schools from property taxes but not others creates an unfair advantage.

Because charter schools are at a distinct disadvantage, any transfer of wealth that resulted from the proposed amendment would be justified. Unlike public school districts, charter schools cannot levy taxes and are not eligible for programs that provide state funding used to offset facilities costs. Any money saved by the charter school could be put directly back into educational budget items, like teacher salaries, curriculum expansion, or improved technology.

OPPONENTS SAY:

SJR 30, in conjunction with SB 545, would result in a transfer of wealth from traditional public schools to charter schools. Because property taxes represent a significant source of revenue for public school districts, this bill would reduce costs for charter schools at the expense of revenue for school districts.

NOTES:

The Legislative Budget Board indicates that SJR 30 by itself would have no fiscal implication to the state other than the cost of publication of the resolution, which would be $118,681. SJR 30, if passed in conjunction with SB 545, could have a negative impact of $1.08 million through the 2016-17 biennium and $11.4 million through the 2018-19 biennium, according to the LBB's fiscal note.

The House companion resolution, HJR 85, was reported favorably from the House Committee on Ways and Means on May 1 and sent to the Calendars Committee on May 8.

SUBJECT: Allowing certain entities to adopt dollar-value homestead exemptions

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Parker, C. Turner

2 nays — Murphy, Springer

1 absent — Wray

SENATE VOTE: On final passage, May 5 — 31-0

WITNESSES: For — Erik Nelson, City of Austin; Deece Eckstein, Travis County Commissioners Court; (*Registered, but did not testify*: Dick Lavine, Center for Public Policy Priorities; Nancy Williams, City of Austin; Tom Tagliabue, City of Corpus Christi; Charles Reed, Dallas County Commissioners Court; Donna Warndof, Harris County; Mark Mendez, Tarrant County Commissioners Court; Daniel Gonzalez and Steven Garza, Texas Association of Realtors; Rick Thompson, Texas Association of Counties; Donald Lee, Texas Conference of Urban Counties; Monty Wynn, Texas Municipal League)

Against — Dale Craymer, Texas Taxpayers and Research Association; (*Registered, but did not testify*: Julie Moore, Occidental Petroleum; Richard A. (Tony) Bennett, Texas Association of Manufacturers; Bill Hammond, Texas Association of Business; Ronnie Volkening, Texas Retailers Association; John W. Fainter, Jr., the Association of Electric Companies of Texas, Inc.; Daniel Womack, the Dow Chemical Company; James LeBas, Texas Chemical Council, AECT, TXOGA, Texas Association of Manufacturers)

BACKGROUND: Tex. Const., Art. 8, sec. 1-b(e) allows a political subdivision other than a county education district to establish a homestead exemption that exempts a percentage of the homestead's value from taxation.

DIGEST: CSSJR 20 would amend the Texas Constitution to allow a political

subdivision other than a school district to create a homestead exemption of a dollar amount of at least $5,000 and less than or equal to 20 percent of the value of the average homestead in the district. If a tax was necessary to fulfill a payment of debt, the tax could continue to be levied against the value of the homesteads exempted under this provision until the debt was discharged.

Under CSSJR 20, the Legislature could prohibit the taxing district from reducing or repealing a homestead exemption.

An individual could continue to receive a homestead exemption granted under certain authority given by existing law to a non-school district taxing entity if the current exemption exceeded the exemption established under the authority granted by CSSJR 20.

These provisions would take effect January 1, 2016.

The ballot proposal would be presented to voters at an election on November 3, 2015. The ballot proposal would read: “The constitutional amendment authorizing the governing body of a political subdivision other than a school district to adopt an exemption from ad valorem taxation of a portion, expressed as a dollar amount, of the market value of an individual's residence homestead and authorizing the legislature to prohibit the governing body of any political subdivision that adopts an exemption from ad valorem taxation of a portion, expressed as a percentage or a dollar amount, of the market value of an individual's residence homestead from reducing the amount of or repealing the exemption.”

SUPPORTERS SAY:

CSSJR 20, in conjunction with its enabling legislation, CSSB 279, would allow a non-school taxing district options in choosing to set homestead exemptions to provide tax relief. Current law allows only school districts to grant a flat-amount homestead exemption. Non-school taxing districts may set homestead exemptions only of a percentage of a homestead's value. However, this dissuades some from offering a homestead exemption entirely because a percentage-based homestead exemption can be so large that the local government surrenders an unsustainable amount of revenue. In some cases, a city is so small that a percentage-based

exemption would offer little relief while costing a city more than it could afford.

Together with CSSB 279, this legislation would allow local governments to reduce property taxes while retaining the authority to pick what option works best for their specific jurisdiction. It would ensure that the homeowners received the maximum benefit, as they could keep their percentage exemption if it exceeded an exemption adopted under the authority of this joint resolution. Homestead exemptions deliver tax relief directly to consumers and families.

OPPONENTS SAY:

CSSJR 20 would allow local governments to shift the burden from one group of taxpayers to another. Instead of giving tax relief to only one group of taxpayers, local entities should cut tax rates altogether.

NOTES:

The Legislative Budget Board notes that the cost to the state for publishing this resolution would be $118,681.